

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate  
Suspension of the Family Child Care  
License of Rhonda Lehman

**FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson on October 8, 2009, at Brown County Family Services, 1117 Center Street, New Ulm, Minnesota. The record closed at the conclusion of the hearing that day.

John Yost, Assistant Brown County Attorney, 519 Center Street, New Ulm, MN 56073, appeared on behalf of Brown County Family Services (County) and the Minnesota Department of Human Services (Department). Linda J. Heine, Attorney at Law, Somsen, Mueller, Lowther & Franta, 106½ N. Minnesota Street, P.O. Box 38, New Ulm, MN 56073, appeared on behalf of the Licensee, Rhonda Lehman.

**STATEMENT OF ISSUE**

Should the temporary immediate suspension of the family child care license of Rhonda Lehman remain in effect because there is reasonable cause to believe that there is an imminent risk of harm to the health, safety or rights of children in her care?

The Administrative Law Judge concludes that there is insufficient evidence that children in the Licensee's care are at imminent risk of harm and recommends that the Commissioner rescind the order of temporary immediate suspension.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Rhonda Lehman, a resident of New Ulm, Minnesota, has been a licensed provider of family child care since 1996. Before the temporary immediate suspension of Ms. Lehman's license on September 21, 2009, the Department had taken no negative action against her license. There is no prior

history of supervision issues or complaints. The County previously issued one correction order to Ms. Lehman in 2007 which apparently related to an over-ratio or over-capacity situation involving a child who was in care for a short time. Ms. Lehman promptly corrected that situation.<sup>1</sup>

2. Ms. Lehman's husband, Edward Lehman, is not included on her child care license and is not involved in caring for the day care children.<sup>2</sup>

3. In May or June of 2009, Ms. Lehman filed a petition for dissolution of her marriage with Mr. Lehman. After the petition was filed and prior to September 10, 2009, Mr. Lehman continued to live in the basement of their New Ulm home while looking for a house to buy. Ms. Lehman and their children (who are now 14, 11, and 10) lived upstairs. This living situation created tension, and several meetings were held between the parties and their attorneys to discuss a resolution. In particular, Ms. Lehman wanted Mr. Lehman to move out so their children could have some stability and an adjustment period before they went back to school in the fall.<sup>3</sup>

4. On Wednesday, September 9, 2009, Mr. Lehman called Ms. Lehman and told her that he was not willing to allow their daughter to spend time with Ms. Lehman on the daughter's birthday the following weekend. Their daughter was upset about this, and Ms. Lehman asked Mr. Lehman to be an adult and consider her feelings. When Mr. Lehman came home that evening, he was angry and had been drinking. Mr. Lehman began yelling profanities at Ms. Lehman and calling her names in front of their two sons. Their sons became very upset because they had not seen their father behave like that before.<sup>4</sup>

5. It was not typical for Mr. Lehman to drink prior to coming home. Ms. Lehman found out later that Mr. Lehman had just learned that his mother had been diagnosed with terminal cancer and might not have long to live. Although Mr. Lehman had never physically harmed Ms. Lehman during their marriage and he did not threaten her on September 10, he is a big man and she felt intimidated by his behavior that evening. At one point, Mr. Lehman temporarily blocked her path when she tried to leave the room, but he moved when she asked him to do so.<sup>5</sup>

6. Ms. Lehman and her two sons thereafter left the house to go to church to pick up her daughter and attend a confirmation meeting. One of Ms. Lehman's sons broke into tears during the meeting. Ms. Lehman talked with her pastor, and decided that she and the children should spend the night away from home. Ms. Lehman was fearful and concerned about the safety of herself and her children and wanted to find a safe place to stay. She and her children spent

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<sup>1</sup> Testimony of Denise Kamm, Rhonda Lehman; Ex. 3 at 7.

<sup>2</sup> Testimony of Kamm.

<sup>3</sup> Testimony of Lehman.

<sup>4</sup> Testimony of Lehman; Ex. 3 at 11-12.

<sup>5</sup> Testimony of Lehman; Ex. 3 at 12.

the night with friends. She did not get her children settled in for the night until 10:30 or 11:00 p.m. Mr. Lehman knew her day care parents would not be able to make alternative arrangements for the next day on such short notice, and decided to go ahead with day care the next day.<sup>6</sup>

7. Ms. Lehman filed an incident report with the New Ulm Police Department at 8:47 p.m. on September 9, 2009. She did not want the police to speak with Mr. Lehman at that time but asked that a report be filed so that she could file a harassment restraining order against Mr. Lehman. The police report indicated that Ms. Lehman had contacted Victim Services that evening and had been advised that there may not be enough to warrant an emergency order since she had not sustained physical harm.<sup>7</sup>

8. On Thursday, September 10, 2009, Ms. Lehman returned to her home prior to 5:00 a.m., since five day care children were expected to arrive between 5:00 and 5:30 a.m. Mr. Lehman came upstairs at 7:00 a.m. and was still angry. Ms. Lehman told him that she had made a police report and he needed to leave, and he did so. Because she was planning to call her attorney, Ms. Lehman asked a friend who was a substitute teacher to come to the day care home that day so that someone else would also be present to provide support and assist with the children. Her friend stayed until approximately 2:30 p.m.<sup>8</sup>

9. Ms. Lehman called her attorney on September 10 to request that Mr. Lehman be removed from the home. They decided to ask Mr. Lehman if he would voluntarily leave the home that day rather than seeking a restraining order. After some discussion between counsel, Mr. Lehman ultimately agreed to leave the home. At 3:10 p.m., Ms. Lehman received a telephone call from her attorney confirming that Mr. Lehman would return to the home at 3:30 p.m. that day to pick up his personal items. Ms. Lehman agreed to this schedule because she wanted to have her husband leave the home and she expected that she would only have one day care child (L.) in her care by then. Ms. Lehman anticipated that another day care child (M.) would be picked up prior to 3:30 p.m. on September 10. M. was a 14-month-old child who had only been in Ms. Lehman's care for approximately ten days. She did not have standard or set daily hours of care. She was still adjusting to the day care schedule and did not always take a nap in the afternoon. M. had been picked up by 3:00 p.m. on nine of the ten prior days she had been in Ms. Lehman's child care.<sup>9</sup>

10. D.E., the parent of two children in Ms. Lehman's day care, arrived at Ms. Lehman's home at approximately 3:00 p.m. on September 10 to pick up her children. After receiving the call confirming that Mr. Lehman would arrive at 3:30 p.m., Ms. Lehman told D.E. that she did not want to be present in the home when Mr. Lehman came to collect his personal items. D.E. offered to have Ms.

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<sup>6</sup> Testimony of Lehman; Ex. 4.

<sup>7</sup> Ex. 3 at 11-12.

<sup>8</sup> Testimony of Lehman; Ex. 4.

<sup>9</sup> Testimony of Lehman; Ex. 3 at 1, 2

Lehman and L. come to her house during that time. Ms. Lehman notified L.'s mother where she could pick up L., gathered what she needed for the children, checked with the parents of a neighborhood child to see if he would like to go with them, and loaded her vehicle. The neighborhood boy's father decided to come and pick up his son rather than have him go to D.E.'s house. At around 3:30 p.m., D.E. drove her own children and Ms. Lehman's daughter to D.E.'s home. Ms. Lehman waited in her vehicle with L. in front of the house until she saw that the neighbor boy's father had arrived to pick him up. She also observed Mr. Lehman pull up to the back of the house. Ms. Lehman was not sure what Mr. Lehman's reaction would be and felt scared, anxious, and sick to her stomach when she saw him arrive at the home. Ms. Lehman then drove with L. to D.E.'s house.<sup>10</sup> L.'s mother picked him up at D.E.'s home at approximately 4:40-4:45 p.m.<sup>11</sup>

11. Mr. Lehman remained in the house from approximately 3:35 p.m. to 5:50 p.m.<sup>12</sup>

12. In her haste to leave the home, Ms. Lehman forgot that M. had fallen asleep approximately 30 minutes before the other children woke up from their naps and was still napping in a crib in Ms. Lehman's son's room.<sup>13</sup>

13. At approximately 4:00 p.m., M.'s father came to pick her up. Mr. Lehman did not know that M. was in the house at that time, and told M.'s father that no one else was present in the home. Later, when Mr. Lehman went upstairs to look for something, he heard a cooing sound, opened the door to a room, and saw a child in the crib. The child was content and stood up in the crib when she saw Mr. Lehman. When he walked out of the room to call Ms. Lehman, the child started to cry. Mr. Lehman called Ms. Lehman at 4:41 p.m. and told her that there was a child in the home. As he was talking on the phone, he entered the living room and saw M.'s mother come to the door. Mr. Lehman told M.'s mother that there was a child in the back room, and M.'s mother took M. home. Ms. Lehman immediately returned to the house but found that M. had already been picked up. She thereafter called M.'s mother.<sup>14</sup>

14. Denise Kamm is the Brown County Licensing Worker assigned to oversee Ms. Lehman's child care home. At approximately 6:00 p.m. on September 10, 2009, Ms. Lehman called Ms. Kamm at home to report the incident. Ms. Lehman told Ms. Kamm that she had called M.'s mother and she was very upset about the situation. When Ms. Kamm asked about Ms. Lehman's current state of mind and whether she should be providing care, Ms. Lehman told her that she is fine when her husband is not home but walks on pins and needles

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<sup>10</sup> Testimony of Lehman; Ex. 3 at 3-5.

<sup>11</sup> Ex. 3 at 4.

<sup>12</sup> Ex. 3 at 3.

<sup>13</sup> Testimony of Kamm, Lehman; Ex. 3.

<sup>14</sup> Testimony of Kamm, Lehman; Ex. 3 at 3-5; Ex. 4.

whenever he is around. She told Ms. Kamm that she sees an end in sight and feels more relaxed and hopeful now that he is not allowed in the home.<sup>15</sup>

15. On Friday, September 11, 2009, Ms. Kamm immediately issued a correction order to Ms. Lehman regarding the incident. The correction order cited Ms. Lehman for bringing L. to an unlicensed home to continue providing care, in violation of Minn. R. 9502.0325, subp. 1; using an unauthorized caregiver who did not fulfill the required supervision requirements, in violation of Minn. R. 9502.0315, subp. 6 and 29, and Minn. Stat. § 245C.03, subd. 1; and failing to keep children under school age within sight and sound of the provider, in violation of Minn. R. 9502.0315, subp. 29 and 9502.0365, subp. 5. Ms. Lehman returned the completed correction order to the County with notations that she would remain in her own home, only use appropriate caregivers, keep children within sight and sound, and keep a chart tracking arrival/pickup and sleeping/waking information.<sup>16</sup>

16. M.'s mother called the County about the incident on September 11, 2009, and the County completed a complaint form. M.'s mother was very upset when Ms. Kamm spoke with her and told Ms. Kamm that she no longer felt comfortable using Ms. Lehman's child care. She told Ms. Kamm that she did not believe that Ms. Lehman was stable enough to provide care at that time. M.'s mother called Ms. Kamm again on September 14, 2009, wondering what was being done about the situation, and thereafter contacted the Department of Human Services.<sup>17</sup>

17. On Monday, September 14, 2009, Michelle Larsen of the Department of Human Services contacted Ms. Kamm and asked whether she was aware of the situation. Ms. Kamm confirmed that she was and said she had issued a correction order and was gathering further information to support a request for a conditional license. Ms. Larsen told Ms. Kamm that DHS would typically view a situation in which a child is left alone as a more serious situation and issue a temporary immediate suspension. She also asked if child protection had screened the report. Ms. Kamm thereafter presented the situation to the County's child protection unit. The unit screened it out because an adult was present in the home. Later, Ms. Larsen asked Ms. Kamm to speak with all parties involved and determine if Ed Lehman was in the home the entire time the child was present.<sup>18</sup>

18. Ms. Kamm thereafter conducted a further investigation relating to the incident. She made an unannounced visit to Ms. Lehman's home on September 14, 2009, and also called her on September 15, 2009, to obtain more specific information and timelines relating to the incident. Ms. Kamm also called Mr. Lehman for additional details, and talked to L.'s mother and D.E. about the

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<sup>15</sup> Testimony of Kamm; Ex. 3.

<sup>16</sup> Exs. 1, 3; Testimony of Kamm.

<sup>17</sup> Ex. 3 at 2, 14-15; Testimony of Kamm.

<sup>18</sup> Testimony of Kamm; Ex. 3 at 2.

events of September 10. D.E. told Ms. Kamm that she understands Ms. Lehman has been very “stressed out” but she has never felt that her children were unsafe with her. L.’s mother told Ms. Kamm that she did not have any complaints regarding the care provided by Ms. Lehman. As part of her investigation, Ms. Kamm also reviewed the police report pertaining to the September 10 incident.<sup>19</sup>

19. Ms. Lehman told Ms. Kamm on September 14 that she had spoken to all of the day care parents to ensure they were aware of the incident and they were all supportive. She told Ms. Kamm on September 15 that D.E. had decided to withdraw her kids “because she is concerned how it will look since she herself is a child care provider at the center in town.” According to Ms. Lehman, D.E. said that she had “no concerns for the safety of her children and hopes to bring them back in the future when things calm down.”<sup>20</sup>

20. Based upon her investigation, Ms. Kamm determined that M. was in the home without Ms. Lehman being present from approximately 3:30 p.m. to 4:45 p.m. Although Mr. Lehman was in the home the entire time, Ms. Kamm determined it was not appropriate supervision because Mr. Lehman initially was not aware that M. was present.<sup>21</sup>

21. Ms. Kamm and her supervisors and coworkers in the County licensing division, along with the Assistant County Attorney, updated representatives of the Department’s Licensing Division about the results of the investigation and consulted with them concerning what steps to take regarding Ms. Lehman’s license. After a series of discussions, the Department representatives indicated that they continued to believe a temporary immediate suspension was appropriate. However, Ms. Kamm and the other County representatives continued to believe that it was appropriate to recommend a conditional license rather than a temporary immediate suspension because they do not believe that the children are in immediate danger or that this situation will occur again in the future. The Department directed the County to submit its recommendation and supporting documentation, and said that DHS would review the information and make the final decision.<sup>22</sup>

22. On or about Friday, September 18, 2009, the County submitted its recommendation to the Department that Ms. Lehman’s license be placed on conditional status for two years. While the County agreed that “something needs to be done quickly in this situation,” it did not feel a temporary immediate suspension is warranted because there is no imminent risk to the children. The County suggested that the following conditions be made a part of the conditional order:

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<sup>19</sup> Ex. 3 at 2-6, 16-18; Testimony of Kamm.

<sup>20</sup> Ex. 3 at 3, 6.

<sup>21</sup> Testimony of Kamm.

<sup>22</sup> Testimony of Kamm; Ex. 3.

1. Deal with all personal matters outside of business hours or arrange for alternative care for the children if necessary to deal with a matter immediately
2. Develop a support plan for herself when feeling overwhelmed such as identifying people she can contact for assistance, what she will do with the children in care and steps to ensure safety of all children in care
3. Take measures to deal with personal stress such as counseling, support groups or informal supports
4. Develop a plan to ensure better supervision of children in care so that whereabouts are easily identified at all times
5. Receive additional supervision and stress management training
6. No variances to capacity or age distribution
7. Continued compliance with the licensing rule
8. Notify licensing agency of changes in enrollment

The County noted that most of the above items had already been addressed by Ms. Lehman in her prevention plan.<sup>23</sup>

23. Ms. Lehman operated her daycare from Friday, September 11, 2009, to Monday, September 21, 2009, without incident.<sup>24</sup>

24. On Monday, September 21, 2009, the Department issued an Order of Temporary Immediate Suspension. The County served the Order on Ms. Lehman on September 21, 2009.<sup>25</sup>

25. On September 24, 2009, the family court issued an Order for Temporary Relief in the divorce proceeding, which gave Ms. Lehman temporary, exclusive use and possession of the family residence commencing September 10, 2009. She also was awarded the temporary custody, care, and control of the minor children subject to Mr. Lehman's right to parenting time. Mr. Lehman is required to pay child support.<sup>26</sup>

26. Ms. Lehman appealed the Order of Temporary Immediate Suspension, resulting in the initiation of this proceeding.

27. On October 1, 2009, a Protective Order was issued to guard the confidentiality of the not-public data involved in this hearing. The hearing was held on October 8, 2009, as scheduled.

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<sup>23</sup> Testimony of Kamm; Ex. 3 at 10.

<sup>24</sup> Testimony of Kamm, Lehman.

<sup>25</sup> Testimony of Kamm; Ex. 2.

<sup>26</sup> Testimony of Lehman; Ex. 6.

28. Since September 10, 2009, Mr. Lehman has returned to the home only one time, when he was permitted to retrieve the rest of his belongings. He has since purchased his own home.<sup>27</sup>

29. Mr. Lehman does not have a criminal history or a pattern of violent behavior or domestic abuse. In addition, there have been no domestic abuse police calls to the home. On one occasion twenty years ago, Ms. Lehman stepped between Mr. Lehman and his father when they were engaged in an argument, and Mr. Lehman hit her. No other episodes of physical violence occurred during the 23 years that Ms. Lehman lived with Mr. Lehman.<sup>28</sup>

30. Prior to the suspension of her license, Ms. Lehman rearranged her home to make it possible for the day care children to nap in the same room. If her license is reinstated, Ms. Lehman will take steps to ensure better supervision of her day care children. She intends to have parents sign their children in and out of the home on a posted chart. She will also write the names of children who are napping on a chalkboard outside the bedroom. Ms. Lehman is willing to have a third party look at her house and give her suggestions regarding a better set-up for her child care. She has agreed to undergo additional supervision and stress management training. She also has acknowledged that she needs to handle personal business outside day care hours or use a substitute to provide care.<sup>29</sup>

31. Ms. Lehman has started a stress management program and has also arranged for counseling for herself and her children. She has a supportive pastor and group of friends. She also has assembled a list of friends who could be called for assistance in an emergency.<sup>30</sup>

32. The County believes that Ms. Lehman provides very good care to the children in her home. She accepts children who have had behavioral issues in other homes and tries to make them at home in her day care. She also offers flexible hours, and thereby meets the needs of parents who do not have traditional schedules. She has received a very low number of correction orders during the period of her licensure with the County.<sup>31</sup>

33. Francille A. Knowles, M.D., who is Ms. Lehman's physician and the parent of children who have been in her day care, submitted a letter in which she indicated that Ms. Lehman is in good mental health and has been able to maintain good judgment despite enduring multiple social stressors. Dr. Knowles indicated that she does not know of any mental or psychological problems that would interfere with Ms. Lehman's ability to care for children.<sup>32</sup>

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<sup>27</sup> Testimony of Lehman.

<sup>28</sup> Testimony of Kamm, Lehman.

<sup>29</sup> Testimony of Kamm; Exs. 3, 4.

<sup>30</sup> Testimony of Kamm, Lehman; Ex. 3 at 5-6; Ex. 4.

<sup>31</sup> Testimony of Kamm.

<sup>32</sup> Ex. 5.



34. Ms. Lehman also offered a number of other letters in support of her continued licensure. Several parents of children in her day care, including Elizabeth Neville, Nicki Brinkman, Anna Fleischmann, Alison Miller, Pam Klossner, Kimberley Janke, Kitty Rolloff, and Nicole Borson, praised the quality of the care provided by Ms. Lehman to their children. While acknowledging that Ms. Lehman made a mistake, they asserted that the amount of stress and tension associated with the divorce has been greatly reduced since Mr. Lehman moved out of the home. They emphasized Ms. Lehman's strong support group and involvement in the community. They expressed trust in the ability of Ms. Lehman to provide appropriate care to their children and do not feel that the safety of their children is in jeopardy in any way. Other individuals who know the Licensee as a friend, fellow day care provider, or through church activities, including Pastor Timothy Anderson, Laura Patterson, Brenda Janni, and Lynn Hill, also provided letters characterizing the September 10 incident as an isolated error and attesting to Ms. Lehman's stability, trustworthiness, and dedication to her day care children.<sup>33</sup>

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Commissioner of Human Services and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50 (2008).

2. If a license holder's actions or failure to comply with applicable law or rule, or the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license.<sup>34</sup>

3. If a license holder appeals an order immediately suspending a license, the Commissioner shall request assignment of an administrative law judge within five working days of receipt of the license holder's timely appeal. A hearing must be conducted within 30 calendar days of the request for assignment.<sup>35</sup>

4. The scope of the hearing shall be limited solely to the issue of whether the temporary immediate suspension should remain in effect pending the commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The burden of proof in expedited hearings shall be limited to the commissioner's demonstration that reasonable cause exists to believe that the license holder's actions or failure

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<sup>33</sup> Ex. 5.

<sup>34</sup> Minn. Stat. § 245A.07, subd. 2

<sup>35</sup> Minn. Stat. § 245A.07, subd. 2a(a).

to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>36</sup>

5. The Commissioner has failed to demonstrate that there is reasonable cause to believe that the license holder has either acted or failed to act in compliance with the law such that she poses an imminent risk of harm to the health, safety, or rights of persons served by the program.

6. The Memorandum attached hereto is incorporated herein by reference.

Based upon the foregoing Conclusions of Law, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Commissioner of Human Services RESCIND the temporary immediate suspension of Rhonda Lehman's family child care license and consider imposing conditions on her license.

Dated: October 22, 2009

s/Barbara L. Neilson

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BARBARA L. NEILSON  
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

### **NOTICE**

This Report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. The parties have ten calendar days to file exceptions to this Report.<sup>37</sup> The Commissioner's final order shall be issued within ten working days from the close of the record.<sup>38</sup> Pursuant to Minn. Stat. § 14.62, subd. 1 (2008), the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail.

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<sup>36</sup> *Id.*

<sup>37</sup> Minn. Stat. § 245A.07, subd. 2a(b).

<sup>38</sup> *Id.*

## MEMORANDUM

The expedited hearing in this matter is intended to address the issue whether the temporary immediate suspension should remain in effect pending the Commissioner's final order under § 245A.08, regarding a licensing sanction issued under subdivision 3 following the immediate suspension. The Commissioner is required to demonstrate that reasonable cause exists to believe that the license holder's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program.<sup>39</sup> "Imminent harm" is not defined in the statute or rules, but the Commissioner has defined "imminent danger" to mean that a child is threatened with immediate or present abuse or neglect that is life-threatening or likely to result in abandonment, sexual abuse, or serious physical injury.<sup>40</sup> While this definition of imminent danger is not binding, it is instructive. At a minimum, "imminent harm" means harm that is impending or about to occur,<sup>41</sup> or ready to take place.<sup>42</sup>

Brown County noted during the hearing that it respectfully disagrees with the Department's decision to impose a temporary immediate suspension in this case. The County instead recommends that conditions be placed on the Licensee's license for a period of two years, and points out that the Licensee has already taken steps to ensure that those conditions are satisfied. In the County's view, even assuming for the sake of argument that it was appropriate to impose a temporary immediate suspension on September 21, 2009, there is no reason to continue that order.

The Administrative Law Judge agrees that there has not been an adequate showing that reasonable cause exists to believe that the Licensee poses an imminent risk of harm to the health, safety, or rights of persons served by the program. It is clear that the Licensee made a terrible mistake when she forgot on September 10 that a child was napping in her home. The potential for harm to the child that existed that day cannot be minimized. Ms. Lehman has admitted her mistake and has taken full responsibility for her poor judgment in trying to deal with a personal situation during day care hours. However, this was an isolated incident that occurred during a time of extreme stress. There is no reasonable basis on this record for believing that the Licensee will ever make such a mistake again, or that she is unstable and poses an imminent risk of harm to children in her care at the present time. The Licensee's husband is now out of the home, her contact with him is greatly limited, and the situation has been greatly defused. An Order for Temporary Relief has been entered awarding the Licensee the exclusive use and possession of the residence, and the Licensee's husband has purchased his own home. The Order restrains both parties from

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<sup>39</sup> *Id.*

<sup>40</sup> Minn. R. 9543.1010, subp. 8.

<sup>41</sup> See *American Heritage College Dictionary* (3d ed.).

<sup>42</sup> See *Merriam-Webster Online Dictionary*.

interfering with each other in any manner during the pendency of the dissolution proceeding. Moreover, the Licensee is undergoing counseling and taking a stress management course to learn how to better handle the stressors in her life. And the Licensee intends to implement safeguards to ensure that she will never again forget that a child is napping and remains in her care. There is every reason to expect that she will be more vigilant in the future.

The Licensee reported the incident immediately to her licensing worker and has complied with all of the recommendations made by the County to ensure that there are safeguards in place to prevent any repetition. She has started attending stress management classes and has arranged for counseling for herself and her children. She operated her daycare for months without incident after the commencement of her divorce proceedings and experienced no further problems during the seven days she was permitted to operate prior to the date her license was suspended. The Licensee's physician submitted a letter attesting to her good judgment and mental health.

Under these circumstances, the record fails to demonstrate that the order of temporary immediate suspension should be continued because the Licensee poses a risk of imminent harm to daycare children. The Administrative Law Judge accordingly recommends that the order of temporary immediate suspension be rescinded.

**B. L. N.**